

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Water

4 **(Amended After Comments)**

5 401 KAR 5:065. KPDES permit conditions.

6 RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, 224.18-100, 224.70-100, 224.70-  
7 120, 224.99-010, 40 C.F.R. 122, 129, 136, [~~Chapter I, Subchapter N,~~] 401- 471 [~~et seq.~~], 503, 33  
8 U.S.C. 1251-1387, EO 2008-507, 2008-531 [~~et seq.~~].

9 STATUTORY AUTHORITY: KRS 224.10-100, **224.10-110**, 224.16-050, 224.70-110, 40  
10 C.F.R. 122, 129, 136, [~~Chapter I, Subchapter N~~] 401- 471 [~~et seq.~~], 503, 33 U.S.C. 1251-1387 [~~et~~  
11 ~~seq.~~, 1342]

12 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the  
13 [~~Environmental and Public Protection~~] cabinet to issue, continue in effect, revoke, modify,  
14 suspend, or deny under [~~such~~] conditions as the cabinet may prescribe, permits to discharge into  
15 any waters of the Commonwealth. KRS 224.16-050 authorizes [~~further empowers~~] the cabinet to  
16 issue federal permits pursuant to 33 U.S.C. [~~USC Section~~] 1342(b) of the Federal Water Pollution  
17 Control Act, 33 U.S.C. [~~USC Section~~] 1251-1387 [~~et seq.~~] subject to the conditions imposed in 33  
18 U.S.C. [~~USC Sections~~] 1342(b) and (d) and that any exemptions granted shall be pursuant to the  
19 Federal Water Pollution Control Act, 33 U.S.C. 1251-1387. EO 2008-507 and 2008-531, effective  
20 June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new  
21 Energy and Environment Cabinet. This administrative regulation establishes [~~sets forth~~] the

1 conditions applicable to a KPDES permit [~~all KPDES permits~~] and the procedures for establishing  
2 and calculating permit conditions.

3 Section 1. Definitions. Definitions established in 40 C.F.R. 122.2 shall apply for the  
4 interpretation of federal regulations that are cited within this administrative regulation.

5 Section 2. Federal Regulations. A KPDES permit limitation, standard, or condition shall be as  
6 established in:

7 (1) 40 C.F.R. 122.41, effective July 1, 2008;

8 (2) 40 C.F.R. 122.42, effective July 1, 2008, as amended in the Federal Register, Volume  
9 73, Number 225 P70483, November 20, 2008;

10 (3) 40 C.F.R. 122.43, effective July 1, 2008;

11 (4) 40 C.F.R. 122.44, effective July 1, 2008;

12 (5) 40 C.F.R. 122.45, effective July 1, 2008;

13 (6) 40 C.F.R. 122, Appendix A, effective July 1, 2008;

14 (7) 40 C.F.R. 129, effective July 1, 2008;

15 (8) 40 C.F.R. 136, effective July 1, 2008;

16 (9) 40 C.F.R. 401- 471, effective July 1, 2008; and

17 (10) 40 C.F.R. 503, effective July 1, 2008.

18 Section 3. Substitutions, Exceptions, and Additions to Cited Federal Regulations.

19 (1) “Waters of the Commonwealth” shall be substituted for “Waters of the United States” in  
20 the federal regulations cited in Section 2 of this administrative regulation.

21 (2) “Cabinet” shall be substituted for “Director” if the authority to administer [~~ecabinet has~~  
22 ~~delegated authority to implement~~] the federal regulations cited in Section 2 of this  
23 administrative regulation has been delegated to the cabinet.

1       (3) “KPDES” shall be substituted for “NPDES” if the **authority to administer [cabinet has**  
2 **delegated authority to implement]**a federal regulation cited in Section 2 of this administrative  
3 regulation **has been delegated to the cabinet.**

4       (4) ~~[The penalties established in KRS 224.99-010 shall be substitutes for the penalties~~  
5 **established in 40 C.F.R. 122.41(a)(2).**

6       ~~(5)~~**In addition to applicable requirements for state permits established in 40 C.F.R. 122.43**  
7 **(b)(1) , effective July 1, 2008, the requirements of interstate agencies shall be considered in**  
8 **[applied to] permits issued by the cabinet.**

9       ~~[Conditions Applicable to all KPDES Permits. All conditions applicable to KPDES permits~~  
10 ~~shall be incorporated into the permits either expressly or by reference. If incorporated by~~  
11 ~~reference, a specific citation to these administrative regulations shall be given in the permit. In~~  
12 ~~addition to conditions required in all KPDES permits, the cabinet shall establish conditions as~~  
13 ~~required on a case-by-case basis under Section 2 of this administrative regulation and 401 KAR~~  
14 ~~5:070.~~

15       ~~—(1) Duty to comply.~~

16       ~~—(a) General requirement. The permittee shall comply with all conditions of this permit. Any~~  
17 ~~permit noncompliance shall constitute a violation of KRS Chapter 224, among which shall be the~~  
18 ~~following remedies: enforcement action, permit revocation, revocation and reissuance, or~~  
19 ~~modification; or denial of a permit renewal application.~~

20       ~~—(b) Specific duties.~~

21       ~~—1. The permittee shall comply with effluent standards or prohibitions established under 40~~  
22 ~~CFR Part 129 as of July 1, 2001, as adopted without change, within the time provided in the~~  
23 ~~federal regulations that establish these standards or prohibitions, even if the permit has not yet~~

1 ~~been modified to incorporate the requirement.~~

2 ~~—2. Any person who violates a permit condition as set forth in the KPDES administrative~~  
3 ~~regulations shall be subject to penalties under KRS 224.99-010(1) and (4).~~

4 ~~—(2) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit~~  
5 ~~after the expiration date of this permit, the permittee shall apply for and obtain a new permit as~~  
6 ~~required in 401 KAR 5:060, Section 1.~~

7 ~~—(3) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an~~  
8 ~~enforcement action that it would have been necessary to halt or reduce the permitted activity in~~  
9 ~~order to maintain compliance with the conditions of this permit.~~

10 ~~—(4) Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any~~  
11 ~~discharge in violation of this permit which has a reasonable likelihood of adversely affecting~~  
12 ~~human health or the environment.~~

13 ~~—(5) Proper operation and maintenance. The permittee shall at all times properly operate and~~  
14 ~~maintain all facilities and systems of treatment and control and related appurtenances which are~~  
15 ~~installed or used by the permittee to achieve compliance with the conditions of this permit.~~  
16 ~~Proper operation and maintenance also shall include adequate laboratory controls, and~~  
17 ~~appropriate quality assurance procedures. This provision shall require the operation of back-up~~  
18 ~~or auxiliary facilities or similar systems which are installed by a permittee only if the operation is~~  
19 ~~necessary to achieve compliance with the conditions of the permit.~~

20 ~~—(6) Permit actions. The permit may be modified, revoked and reissued, or revoked for cause.~~  
21 ~~The filing of a request by the permittee for a permit modification, revocation and reissuance, or~~  
22 ~~revocation, or a notification of planned changes or anticipated noncompliance, shall not stay any~~  
23 ~~permit condition.~~

1 ~~—(7) Property rights. This permit shall not convey any property rights of any kind, or any~~  
2 ~~exclusive privilege.~~

3 ~~—(8) Duty to provide information. The permittee shall furnish to the cabinet, within a~~  
4 ~~reasonable time, any information which the cabinet may request to determine whether cause~~  
5 ~~exists for modifying, revoking and reissuing, or revoking this permit, or to determine compliance~~  
6 ~~with this permit. The permittee shall also furnish to the cabinet, upon request, copies of records~~  
7 ~~required to be kept by this permit.~~

8 ~~—(9) Inspection and entry. The permittee shall allow the cabinet, or an authorized~~  
9 ~~representative, upon the presentation of credentials and other documents as may be required by~~  
10 ~~law, to:~~

11 ~~—(a) Enter upon the permittee's premises where a regulated facility or activity is located or~~  
12 ~~conducted, or where records pertinent to the KPDES program are or may be kept;~~

13 ~~—(b) Have access to and copy, at reasonable times, any records that are required to be kept~~  
14 ~~under the conditions of this permit;~~

15 ~~—(c) Inspect at reasonable times any facilities, equipment, including monitoring and control~~  
16 ~~equipment, practices, or operations regulated or required under this permit; and~~

17 ~~—(d) Sample or monitor at reasonable times, for the purposes of assuring KPDES program~~  
18 ~~compliance or as otherwise authorized by KRS Chapter 224, any substances or parameters at any~~  
19 ~~location.~~

20 ~~—(10) Monitoring and records:~~

21 ~~—(a) Samples and measurements taken for the purpose of monitoring shall be representative of~~  
22 ~~the monitored activity.~~

23 ~~—(b) The permittee shall retain records of all monitoring information, including all calibration~~

~~and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time.~~

~~—(c) Records of monitoring information shall include:~~

~~—1. The date, exact place, and time of sampling or measurements;~~

~~—2. The individuals who performed the sampling or measurements;~~

~~—3. The dates analyses were performed;~~

~~—4. The individuals who performed the analyses;~~

~~—5. The analytical techniques or methods used; and~~

~~—6. The results of the analyses.~~

~~—(d) Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in the permit.~~

~~—(e) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit shall, upon conviction, be subject to penalties under KRS 224.99-010(4).~~

~~—(11) Signatory requirement. All applications, reports, or information submitted to the cabinet shall be signed and certified as indicated in 401 KAR 5:060, Section 9. Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be subject to penalties under KRS 224.99-010(4).~~

~~—(12) Reporting requirements.~~

~~—(a) Planned changes. The permittee shall give notice to the cabinet as soon as possible of any planned physical alteration or additions to the permitted facility. Notice shall be required only if:~~

~~—1. The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source in 401 KAR 5:080, Section 5; or~~

~~—2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification only applies to pollutants which are subject either to effluent limitations in the permit, or to notification requirements under 401 KAR 5:080, Section 5.~~

~~—(b) Anticipated noncompliance. The permittee shall give advance notice to the cabinet of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.~~

~~—(c) Transfers. The permit shall not be transferable to any person except after notice to the cabinet. The cabinet may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate other requirements as may be necessary under KRS Chapter 224.~~

~~—(d) Monitoring reports. Monitoring results shall be reported at the intervals specified in the permit. Monitoring results shall be reported as follows:~~

~~—1. Monitoring results shall be reported on a Discharge Monitoring Report (DMR).~~

~~—2. If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR Part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.~~

~~—3. Calculations for all limitations which require averaging of measurements shall utilize an~~

1 ~~arithmetic mean unless otherwise specified by the cabinet in the permit.~~

2 ~~—(e) Compliance schedules. Reports of compliance or noncompliance with, or any progress~~  
3 ~~reports on, interim and final requirements contained in any compliance schedule of this permit~~  
4 ~~shall be submitted no later than fourteen (14) days following each schedule date.~~

5 ~~—(f) Twenty-four (24) hour reporting. The permittee shall follow the provisions of 401 KAR~~  
6 ~~5:015 and shall orally report any noncompliance which may endanger health or the environment,~~  
7 ~~within twenty-four (24) hours from the time the permittee becomes aware of the circumstances.~~  
8 ~~This report shall be in addition to and not in lieu of any other reporting requirement applicable to~~  
9 ~~the noncompliance. A written submission shall also be provided within five (5) days of the time~~  
10 ~~the permittee becomes aware of the circumstances. The written submission shall contain a~~  
11 ~~description of the noncompliance and its cause; the period of noncompliance, including exact~~  
12 ~~dates and times, and if the noncompliance has not been corrected, the anticipated time it is~~  
13 ~~expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of~~  
14 ~~the noncompliance. The cabinet may waive the written report on a case-by-case basis if the oral~~  
15 ~~report has been received within twenty-four (24) hours. The following shall be included as~~  
16 ~~events which shall be reported within twenty-four (24) hours:~~

17 ~~—1. Any unanticipated bypass which exceeds any effluent limitation in the permit, as indicated~~  
18 ~~in subsection (13) of this section.~~

19 ~~—2. Any upset which exceeds any effluent limitation in the permit.~~

20 ~~—3. Violation of a maximum daily discharge limitation for any of the pollutants listed by the~~  
21 ~~cabinet in the permit to be reported within twenty-four (24) hours, as indicated in Section 2(7) of~~  
22 ~~this administrative regulation.~~

23 ~~—(g) Other noncompliance. The permittee shall report all instances of noncompliance not~~



1 ~~reported under paragraphs (d), (e), and (f) of this subsection, when monitoring reports are~~  
2 ~~submitted. The reports shall contain the information listed in paragraph (f) of this subsection.~~

3 ~~—(h) Other information. Where the permittee becomes aware that it failed to submit any~~  
4 ~~relevant fact in a permit application, or submitted incorrect information in a permit application or~~  
5 ~~in any report to the cabinet, it shall promptly submit these facts or information.~~

6 ~~—(13) Occurrence of a bypass.~~

7 ~~—(a) Bypass not exceeding limitations. The permittee may allow any bypass to occur which~~  
8 ~~does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance~~  
9 ~~to assure efficient operation. This type of bypass shall not be subject to the provisions of~~  
10 ~~paragraphs (b) and (c) of this subsection.~~

11 ~~—(b) Notice.~~

12 ~~—1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall~~  
13 ~~submit prior notice, if possible at least ten (10) days before the date of the bypass. Compliance~~  
14 ~~with this requirement constitutes compliance with 401 KAR 5:015, Section 1.~~

15 ~~—2. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as~~  
16 ~~required in subsection (12)(f) of this section, twenty four (24) hour notice. Compliance with this~~  
17 ~~requirement constitutes compliance with 401 KAR 5:015, Section 4.~~

18 ~~—(c) Prohibition of a bypass.~~

19 ~~—1. Bypassing shall be prohibited, and the cabinet may take enforcement action against a~~  
20 ~~permittee for bypass, unless:~~

21 ~~—a. The bypass was unavoidable to prevent loss of life, personal injury, or severe property~~  
22 ~~damage;~~

23 ~~—b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment~~

~~facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition shall not be satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and~~

~~—c. The permittee submitted notices as required under paragraph (b) of this subsection.~~

~~—2. The cabinet may approve an anticipated bypass, after considering its adverse effects, if the cabinet determines that it will meet the three (3) conditions listed in subparagraph 1a, b, and c of this paragraph.~~

~~—(14) Occurrence of an upset.~~

~~—(a) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of paragraph (b) of this subsection are met.~~

~~—(b) Conditions necessary for a demonstration of an upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:~~

~~—1. An upset occurred and that the permittee can identify the causes of the upset;~~

~~—2. The permitted facility was at the time being properly operated;~~

~~—3. The permittee submitted notice of the upset as required in subsection (12)(f) of this section; and~~

~~—4. The permittee complied with any remedial measures required under subsection (4) of this section.~~

~~—(c) Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset shall have the burden of proof.~~

~~—(15) Additional conditions applicable to specified categories of KPDES permits. The following conditions, in addition to others set forth in this administrative regulation, shall apply to all KPDES permits within the categories specified below:~~

~~—(a) Existing manufacturing, commercial, mining, and silvicultural dischargers. In addition to the reporting requirements under subsections (12), (13), and (14) of this section, any existing manufacturing, commercial, mining, and silvicultural discharger shall notify the cabinet as soon as it knows or has reason to know:~~

~~1. That any activity has occurred or will occur which would result in the discharge on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels:"~~

~~—a. 100 micrograms per liter (100 µg/l);~~

~~—b. 200 micrograms per liter (200 µg/l) for acrolein and acrylonitrile; 500 micrograms per liter (500 µg/l) for 2,4 dinitrophenol and for 2-methyl 4,6-dinitrophenol; and one (1) milligram per liter (1 mg/l) for antimony;~~

~~—c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 401 KAR 5:060, Section 2(7);~~

~~—d. The level established by the cabinet in accordance with Section 2(6) of this administrative regulation.~~

~~2. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels:"~~

~~—a. 500 micrograms per liter (500 µg/l);~~

~~—b. One (1) milligram per liter (1 mg/l) for antimony;~~

~~—c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 401 KAR 5:060, Section 2(7); or~~

~~—d. The level established by the cabinet in accordance with Section 2(6) of this administrative regulation.~~

~~—(b) POTWs.~~

~~—1. POTWs shall provide adequate notice to the cabinet of the following:~~

~~—a. Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to the KPDES administrative regulations if it were directly discharging those pollutants; or~~

~~—b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.~~

~~—2. For purposes of this paragraph, adequate notice shall include information on the quality and quantity of effluent introduced into the POTWs and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.~~

~~—Section 2. Establishing Permit Conditions. For the purpose of this section, permit conditions shall include any statutory or regulatory requirement which takes effect prior to the final administrative disposition of a permit. An applicable requirement may be any requirement which takes effect prior to the modification or revocation or reissuance of a permit, to the extent allowed in 401 KAR 5:070, Section 6. New or reissued permits, and to the extent allowed under 401 KAR 5:070, Section 6 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this section. In addition to the conditions established under Section 1 of this administrative regulation each KPDES permit shall include conditions meeting the following requirements as applicable.~~

1 ~~—(1) Technology based effluent limitations and standards; new source performance standards;~~  
2 ~~and pretreatment requirements and standards, as required by 40 CFR Chapter I, Subchapter N~~  
3 ~~(Part 401 et seq.), adopted without change in Section 4 of this administrative regulation, or case-~~  
4 ~~by case effluent limitations and standards and pretreatment requirements or based on a~~  
5 ~~combination of those standards in accordance with 401 KAR 5:080, Section 1(2) shall be~~  
6 ~~included, as applicable. For new sources or new discharges, these technology based limitations~~  
7 ~~and standards shall be subject to the provisions of 401 KAR 5:080, Section 5(2)(a).~~

8 ~~—(2) Other effluent limitations and standards of KRS Chapter 224 shall be included as~~  
9 ~~applicable. If any applicable toxic effluent standard or prohibition, including any schedule of~~  
10 ~~compliance specified in the effluent standard or prohibition, is promulgated by EPA for a toxic~~  
11 ~~pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in~~  
12 ~~the permit, the cabinet shall institute proceedings under these administrative regulations to~~  
13 ~~modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.~~

14 ~~—(3) Reopener clause. For any discharger within a primary industry category, as listed in~~  
15 ~~Section 4(2) of this administrative regulation requirements under the KPDES administrative~~  
16 ~~regulations shall be incorporated as applicable, as follows:~~

17 ~~—(a) On or before June 30, 1981.~~

18 ~~—1. If applicable standards or limitations have not yet been promulgated, the permit shall~~  
19 ~~include a condition stating that if an applicable standard or limitation is promulgated by EPA and~~  
20 ~~that effluent standard or limitation is more stringent than any effluent limitation in the permit or~~  
21 ~~controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked~~  
22 ~~and reissued to conform to that effluent standard or limitation.~~

23 ~~—2. If applicable standards or limitations have been promulgated or approved, the permit shall~~

1 ~~include those standards or limitations.~~

2 ~~—(b) After June 30, 1981, any permit issued shall include effluent limitations and a compliance~~  
3 ~~schedule to meet the applicable requirements indicated in Section 1(1)(b) of this administrative~~  
4 ~~regulation, whether or not applicable effluent limitations guidelines have been promulgated or~~  
5 ~~approved by EPA. These permits need not incorporate the reopener clause required by paragraph~~  
6 ~~(a) of this subsection.~~

7 ~~—(c) The cabinet shall promptly modify or revoke and reissue any permit containing the clause~~  
8 ~~required under paragraph (a) of this subsection to incorporate an applicable EPA effluent~~  
9 ~~standard or limitation which is promulgated or approved after the permit is issued if that effluent~~  
10 ~~standard or limitation is more stringent than any effluent limitation in the permit, or controls a~~  
11 ~~pollutant not limited in the permit.~~

12 ~~—(4) Water quality standards and state requirements shall be included as applicable. Any~~  
13 ~~requirements in addition to or more stringent than EPA's effluent limitations guidelines or~~  
14 ~~standards shall be included, if necessary to:~~

15 ~~—(a) Achieve water quality standards established under KRS Chapter 224 and administrative~~  
16 ~~regulations promulgated pursuant thereto, including any narrative criteria contained in 401 KAR~~  
17 ~~5:031.~~

18 ~~—1. Limitations shall control all pollutants or pollutant parameters (either conventional,~~  
19 ~~nonconventional, or toxic pollutants) which the cabinet determines are or may be discharged at a~~  
20 ~~level which will cause, have the reasonable potential to cause, or contribute to an excursion~~  
21 ~~above any water quality standard, including narrative criteria for water quality.~~

22 ~~—2. If determining whether a discharge causes, has the reasonable potential to cause, or~~  
23 ~~contributes to an in-stream excursion above a narrative or numeric criteria within a water quality~~

~~standard, the cabinet shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing, if evaluating whole effluent toxicity, and if appropriate, the dilution of the effluent in the receiving water.~~

~~— 3. If the cabinet determines, using the procedures in subparagraph 2 of this paragraph, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a numeric criteria within a water quality standard for an individual pollutant, the permit shall contain effluent limits for that pollutant.~~

~~— 4. If the cabinet determines, using the procedures in subparagraph 2 of this paragraph, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit shall contain effluent limits for whole effluent toxicity.~~

~~— 5. Except as provided in this subparagraph, if the cabinet determines, using the procedures in subparagraph 2 of this paragraph, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable water quality standard, the permit shall contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity shall not be necessary if the cabinet demonstrates in the fact sheet or statement of basis of the KPDES permit, using the procedures in subparagraph 2 of this paragraph, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative water quality standards.~~

~~— 6. If 401 KAR 5:031 does not specify a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable water~~

1 ~~quality standard, the cabinet shall establish effluent limits using one (1) or more or the following~~  
2 ~~options:~~

3 ~~— a. Establish effluent limits using a calculated numeric water quality criterion for the pollutant~~  
4 ~~which the cabinet demonstrates will attain and maintain applicable narrative water quality~~  
5 ~~criteria and will fully protect the designated use. The criterion may be derived using~~  
6 ~~administrative regulation interpreting the narrative water quality criterion, supplemented with~~  
7 ~~other relevant information which may include: EPA's Water Quality Standards Handbook,~~  
8 ~~September 1993, risk assessment data, exposure data, information about the pollutant from the~~  
9 ~~Food and Drug Administration, and current EPA criteria documents; or~~

10 ~~— b. Establish effluent limits on a case-by-case basis, using water quality criteria listed in 401~~  
11 ~~KAR 5:031, supplemented if necessary by other relevant information; or~~

12 ~~— c. Establish effluent limitations on an indicator parameter for the pollutant of concern, if:~~

13 ~~— (i) The permit identifies which pollutants are intended to be controlled by the use of the~~  
14 ~~effluent limitation;~~

15 ~~— (ii) The fact sheet required by 401 KAR 5:075 sets forth the basis for the limit, including a~~  
16 ~~finding that compliance with the effluent limit on the indicator parameter will result in controls~~  
17 ~~on the pollutant of concern which are sufficient to attain and maintain applicable water quality~~  
18 ~~standards;~~

19 ~~— (iii) The permit requires all effluent and ambient monitoring necessary to show that during~~  
20 ~~the term of the permit the limit on the indicator parameter continues to attain and maintain~~  
21 ~~applicable water quality standards; and~~

22 ~~— (iv) The permit contains a reopener clause allowing the cabinet to modify or revoke and~~  
23 ~~reissue the permit if the limits on the indicator parameter no longer attain and maintain~~



1 ~~applicable water quality standards.~~

2 ~~— 7. If developing water quality based effluent limits under this paragraph the cabinet shall~~  
3 ~~ensure that:~~

4 ~~— a. The level of water quality to be achieved by limits on point sources established under this~~  
5 ~~paragraph is derived from, and complies with all applicable water quality standards; and~~

6 ~~— b. Effluent limits developed to protect a narrative water quality criterion, a numeric water~~  
7 ~~quality criterion, or both, are consistent with the assumptions and requirements of any available~~  
8 ~~wasteload allocation for the discharge prepared by the cabinet;~~

9 ~~— (b) Attain or maintain a specified water quality through water quality related effluent limits~~  
10 ~~established under Section 302 of the Clean Water Act, or CWA, 33 USC Section 1312;~~

11 ~~— (c) Conform to applicable water quality requirements if the discharge affects a state other~~  
12 ~~than Kentucky;~~

13 ~~— (d) Incorporate any more stringent limitations, treatment standards, or schedule of~~  
14 ~~compliance requirements established under federal or state law or administrative regulations in~~  
15 ~~accordance with Section 301(b)(1)(c) of CWA, 33 USC Section 1311(b)(1)c.~~

16 ~~— (e) Ensure consistency with the requirements of any Kentucky Water Quality Management~~  
17 ~~Plan approved by EPA.~~

18 ~~— (f) Incorporate alternative effluent limitations or standards if warranted by "fundamentally~~  
19 ~~different factors," under 401 KAR 5:080, Section 3.~~

20 ~~— (5) Toxic pollutants. Limitations established under subsections (1), (2) or (4) of this section,~~  
21 ~~to control pollutants meeting the criteria listed in paragraph (a) of this subsection shall be~~  
22 ~~included in the permit, if applicable. Limitations shall be established in accordance with~~  
23 ~~paragraph (b) of this subsection. An explanation of the development of these limitations shall be~~

1 included in the fact sheet under 401 KAR 5:075, Section 4.

2 — (a) Limitations shall control all toxic pollutants which:

3 — 1. The cabinet determines, based on information reported in a permit application under 401  
4 KAR 5:060, Section 2(7), or in a notification under Section 1(15)(a) of this administrative  
5 regulation or on other information, are or may be discharged at a level greater than the level  
6 which can be achieved by the technology-based treatment requirements appropriate to the  
7 permittee under 401 KAR 5:080, Section 1(2)(c); or

8 — 2. The discharger does or may use or manufacture as an intermediate or final product or by-  
9 product.

10 — (b) The requirement that the limitations control the pollutants meeting the criteria of  
11 paragraph (a) of this subsection shall be satisfied by:

12 — 1. Limitations on those pollutants; or

13 — 2. Limitations on other pollutants which, in the judgment of the cabinet, will provide  
14 treatment of the pollutants under paragraph (a) of this subsection to the levels required by 401  
15 KAR 5:080, Section 1(2)(c).

16 — (6) Notification level. A "notification level" which exceeds the notification level of Section  
17 1(15)(a)1a, b, or c of this administrative regulation, upon a petition from the permittee or on the  
18 cabinet's initiative shall be incorporated as a permit condition, if applicable. This new  
19 notification level shall not exceed the level which can be achieved by the technology-based  
20 treatment requirements appropriated to the permittee under 401 KAR 5:080, Section 1(2)(c).

21 — (7) Twenty-four (24) hour reporting. Pollutants for which the permittee shall report violations  
22 of maximum daily discharge limitations under Section 1(12)(f) of this administrative regulation  
23 (twenty-four (24) hour reporting) shall be listed as such in the permit. This list shall include any

~~toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.~~

~~—(8) Monitoring requirements. The permit shall incorporate, as applicable in addition to Section 1(12) of this administrative regulation, the following monitoring requirements:~~

~~—(a) To assure compliance with permit limitations, requirements to monitor:~~

~~—1. The mass, or other measurement specified in the permit, for each pollutant limited in the permit;~~

~~—2. The volume of effluent discharged from each outfall; and~~

~~—3. Other measurements as appropriate; including pollutants in internal waste streams under Section 3(8) of this administrative regulation; frequency, rate of discharge, etc., for noncontinuous discharges under Section 3(5) of this administrative regulation; and pollutants subject to notification requirements under Section 1(15)(a) of this administrative regulation.~~

~~—(b) According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under the federal regulation, and according to a test procedure specified in the permit for pollutants with no approved methods.~~

~~—(c) Requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but not less than once a year with the following exceptions:~~

~~—1. Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but not less than once a year.~~

~~—2. Requirements to report monitoring results for storm water discharges associated with industrial activity, other than those addressed in subparagraph 1 of this paragraph shall be~~

~~established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge shall require:~~

~~— a. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;~~

~~— b. The discharger to maintain for a period of three (3) years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance;~~

~~— c. The report and certification be signed in accordance with 401 KAR 5:060, Section 9; and~~

~~— d. Permits for storm water discharges associated with industrial activity from inactive mining operations may, if annual inspections are impracticable, require certification once every three (3) years by a professional engineer that the facility is in compliance with the permit, or alternative requirements.~~

~~— 3. Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under Section 1(12)(g) of this administrative regulation at least annually.~~

~~— (d) Monitoring waivers for certain guideline listed pollutants.~~

~~— 1. The cabinet may authorize a discharger subject to technology-based effluent limitations guidelines and standards in an KPDES permit to forego sampling of a pollutant found at 40 CFR Chapter I, Subchapter N if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels~~

1 ~~from intake water and without any increase in the pollutant due to activities of the discharger.~~

2 ~~— 2. This waiver shall be good only for the term of the permit and shall not be available during~~  
3 ~~the term of the first permit issued to a discharger.~~

4 ~~— 3. Any request for this waiver shall be submitted when applying for a reissued permit or~~  
5 ~~modification of a reissued permit. The request shall demonstrate through sampling or other~~  
6 ~~technical information, including information generated during an earlier permit term, that the~~  
7 ~~pollutant is not present in the discharge or is present only at background levels from intake water~~  
8 ~~and without any increase in the pollutant due to activities of the discharger.~~

9 ~~— 4. Any grant of the monitoring waiver shall be included in the permit as an express permit~~  
10 ~~condition and the reasons supporting the grant shall be documented in the permit's fact sheet or~~  
11 ~~statement of basis.~~

12 ~~— 5. This provision shall not supersede certification processes and requirements already~~  
13 ~~established in existing effluent limitations guidelines and standards, 40 CFR Chapter I,~~  
14 ~~Subchapter N.~~

15 ~~— (9) Pretreatment program for POTWs. If applicable to the facility the permit shall incorporate~~  
16 ~~as a permit condition requirements for POTWs to:~~

17 ~~— (a) Identify, in terms of character and volume of pollutants, any significant indirect~~  
18 ~~dischargers into the POTW subject to pretreatment standards under the KPDES administrative~~  
19 ~~regulations.~~

20 ~~— (b) Submit a local program if required by and in accordance with 401 KAR 5:057, to assure~~  
21 ~~compliance with pretreatment standards to the extent applicable in the KPDES administrative~~  
22 ~~regulations. The local program shall be incorporated into the permit as described in 401 KAR~~  
23 ~~5:057. The program shall require all indirect dischargers to the POTW to comply with the~~

1 applicable reporting requirements.

2 ~~—(10) Best management practices shall be included as a permit condition, as applicable, to~~  
3 ~~control or abate the discharge of pollutants if:~~

4 ~~—(a) Applicable under KRS Chapter 224 and the KPDES administrative regulations for the~~  
5 ~~control of toxic pollutants and hazardous substances from ancillary activities;~~

6 ~~—(b) Numeric effluent limitations are infeasible;~~

7 ~~—(c) The practices are reasonably necessary to achieve effluent limitations and standards or to~~  
8 ~~carry out the purposes and intent of KRS Chapter 224; or~~

9 ~~—(d) Authorized under section 402(p) of the CWA, 33 USC 1342(p) for the control of storm~~  
10 ~~water discharges.~~

11 ~~—(11) Qualifying state or local programs.~~

12 ~~—(a) For storm water discharges associated with small construction activity, as identified in~~  
13 ~~401 KAR 5:002, Section 1, the KPDES permit may include permit conditions that incorporate~~  
14 ~~qualifying state or local erosion and sediment control program requirements by reference. If a~~  
15 ~~qualifying state or local program does not include one (1) or more of the elements in this~~  
16 ~~paragraph, then the KPDES shall include those elements as conditions in the permit. A~~  
17 ~~qualifying state or local erosion and sediment control program shall be one that includes:~~

18 ~~—1. Requirements for construction site operators to implement appropriate erosion and~~  
19 ~~sediment control best management practices;~~

20 ~~—2. Requirements for construction site operators to control waste such as discarded building~~  
21 ~~materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site~~  
22 ~~that may cause adverse impacts to water quality; and~~

23 ~~—3. Requirements for construction site operators to develop and implement a storm water~~

~~pollution prevention plan; a storm water pollution prevention plan shall include site descriptions, descriptions of appropriate control measures, copies of approved state or local requirements, maintenance procedures, inspection procedures, and identification of nonstorm water discharges.~~

~~—(b) For storm water discharges from construction activity, as identified in 401 KAR 5:002, Section 1, KPDES permit may include permit conditions that incorporate qualifying state or local erosion and sediment control program requirements by reference. A qualifying state or local erosion and sediment control program shall be one that includes the elements listed in paragraph (a) of this subsection and any additional requirements necessary to achieve "best available technology" and "best conventional technology" based on the best professional judgement of the permit writer.~~

~~—(12) Reissued permits.~~

~~—(a) The permit shall include a condition concerning reissued permits, as applicable. If a permit is renewed or reissued, interim limitations, standards or conditions which are at least as stringent as any final limitations, standards, or conditions in the previous permit shall be incorporated unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under 401 KAR 5:070, Section 6.~~

~~—(b) For effluent limitations established on the basis of 401 KAR 5:080, Section 1(2)(c)2, a permit shall not be renewed, revoked and reissued, or modified on the basis of effluent guidelines promulgated under CWA Section 304(b), 33 USC 1314(b), subsequent to the original issuance of the permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.~~

~~—1. Exceptions. A permit to which paragraph (a) of this subsection applies may be renewed,~~

1 ~~reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if:~~

2 ~~— a. Material and substantial alterations or additions to the permitted facility occurred after~~  
3 ~~permit issuance which justify the application of a less stringent effluent limitation;~~

4 ~~— b. Information is available which was not available at the time of permit issuance, other than~~  
5 ~~revised regulations, guidance, or test methods, and which would have justified the application of~~  
6 ~~a less stringent effluent limitation at the time of permit issuance;~~

7 ~~— c. The cabinet determines that technical mistakes or mistaken interpretations of law were~~  
8 ~~made in issuing the permit under 401 KAR 5:080, Section 1(2)(c)2;~~

9 ~~— d. A less stringent effluent limitation is necessary because of events over which the permittee~~  
10 ~~has no control and for which there is no reasonably available remedy;~~

11 ~~— e. The permittee has received a permit modification under 401 KAR 5:055, Section 3; or~~

12 ~~— f. The permittee has installed the treatment facilities required to meet the effluent limitations~~  
13 ~~in the previous permit and has properly operated and maintained the facilities but has~~  
14 ~~nevertheless been unable to achieve the previous effluent limitations. If this occurs, the~~  
15 ~~limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control~~  
16 ~~actually achieved, but shall not be less stringent than required by effluent guidelines in effect at~~  
17 ~~the time of permit renewal, reissuance, or modification.~~

18 ~~— 2. Limitations. A permit to which paragraph (a) of this subsection applies shall not be~~  
19 ~~renewed, reissued, or modified to contain an effluent limitation which is less stringent than~~  
20 ~~required by effluent guidelines in effect when the permit is renewed, reissued, or modified. The~~  
21 ~~permit to discharge into waters shall not be renewed, issued, or modified to contain less stringent~~  
22 ~~effluent limitation if the implementation of the limitation would result in a violation of a water~~  
23 ~~quality standard under 401 KAR 5:031 applicable to those waters.~~



1 ~~—(13) Privately owned treatment works. For a privately owned treatment works, any~~  
2 ~~conditions expressly applicable to any user, as a limited copermitee, that may be necessary in~~  
3 ~~the permit issued to the treatment works to ensure compliance with applicable requirements~~  
4 ~~under this administrative regulation shall be imposed as applicable. Alternatively, the cabinet~~  
5 ~~may issue separate permits to the treatment works and to its users, or may require a separate~~  
6 ~~permit application from any user. The cabinet's decision to issue a permit with no conditions~~  
7 ~~applicable to any user, to impose conditions on one (1) or more users, to issue separate permits~~  
8 ~~or to require separate applications, and the basis for that decision shall be stated in the fact sheet~~  
9 ~~for the draft permit for the treatment works.~~

10 ~~—(14) Grants or loans. Any conditions imposed in grants or loan made by the cabinet to~~  
11 ~~POTWs which are reasonably necessary for the achievement of federally issued effluent~~  
12 ~~limitations shall be required as applicable.~~

13 ~~—(15) Sewage sludge. Requirements shall be imposed, as applicable, governing the disposal of~~  
14 ~~sewage sludge from publicly owned treatment works, in accordance with 40 CFR Part 503.~~

15 ~~—(16) Coast Guard. If a permit is issued to a facility that may operate at certain times as a~~  
16 ~~means of transportation over water, the permit shall be conditioned as applicable. A condition~~  
17 ~~that the discharge shall comply with any applicable federal regulations promulgated by the~~  
18 ~~secretary of the department in which the Coast Guard is operating which establish specifications~~  
19 ~~for safe transportation, handling, carriage, and storage of pollutants shall be imposed if~~  
20 ~~applicable.~~

21 ~~—(17) Navigation. Any conditions that the Secretary of the United States Army considers~~  
22 ~~necessary to ensure that navigation and anchorage will not be substantially impaired, in~~  
23 ~~accordance with 401 KAR 5:075, Section 9, shall be included as applicable.~~

~~—(18) Duration of permits shall be imposed, as set forth in 401 KAR 5:070, Section 1.~~

~~—Section 3. Calculating KPDES Permit Conditions. The following provisions shall be used to calculate terms and conditions of the KPDES permit.~~

~~—(1) Outfalls and discharge points. All permit effluent limitations, standards, and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided: under Section 2(10) of this administrative regulation; with BMPs if limitations are infeasible; and under subsection (8) of this section, limitations on internal waste streams.~~

~~—(2) Production-based limitations.~~

~~—(a) For POTWs, permit limitations, standards, or prohibitions shall be calculated based on design flow.~~

~~—(b)1. Except in the case of POTWs or as provided in subparagraph 2a(ii) of this paragraph, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.~~

~~—2.a.(i) The cabinet may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.~~

~~—(ii) For the automotive manufacturing industry only, the cabinet may establish a condition~~

~~under subparagraph 2a(i) of this paragraph if the applicant satisfactorily demonstrates to the cabinet at the time the application is submitted that its actual production, as indicated in subparagraph 2a(i) of this paragraph, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.~~

~~— b. If the cabinet establishes permit conditions under subparagraph 2a(i) of this paragraph:~~

~~— (i) The permit shall require the permittee to notify the cabinet at least two (2) business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one (1) month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels shall be required to cover a period or production level not covered by prior notice or, if during two (2) consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.~~

~~— (ii) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the cabinet under subparagraph 2b of this paragraph, then the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.~~

~~— (iii) The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.~~

~~—(3) Metals. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of "total recoverable metal" as described in 40 CFR Part 136 unless:~~

~~—(a) An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form;~~

~~—(b) In establishing permit limitations on a case-by-case basis under 401 KAR 5:080, Section 1(2), it is necessary to express the limitation on the metal in the dissolved or valent total form to carry out the provisions of KRS 224.16-050; or~~

~~—(c) All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).~~

~~—(4) Continuous discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, unless impracticable shall be stated as:~~

~~—(a) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and~~

~~—(b) Average weekly and average monthly discharge limitations for POTWs.~~

~~—(5) Noncontinuous discharges. Discharges which are not continuous, as defined in 401 KAR 5:002, Section 1, shall be particularly described and limited, considering the following factors, as appropriate:~~

~~—(a) Frequency: for example, a batch discharge shall not occur more than once every three (3) weeks;~~

~~—(b) Total mass: for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge;~~

~~—(c) Maximum rate of discharge of pollutants during the discharge: for example, not to exceed~~

~~two (2) kilograms of zinc per minute; and~~

~~—(d) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure: for example, shall not contain at any time more than one-tenth (0.1) mg/l zinc or more than 250 grams (0.25 kilogram) of zinc in any discharge.~~

~~—(6) Mass limitations.~~

~~—(a) All pollutant limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:~~

~~—1. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;~~

~~—2. When applicable standards and limitations are expressed in terms of other units of measurement; or~~

~~—3. If in establishing permit limitations on a case by case basis under 401 KAR 5:080, Section 1, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation, for example, discharges of TSS from certain mining operations, and permit conditions ensure that dilution will not be used as a substitute for treatment.~~

~~—(b) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.~~

~~—(7) Pollutants in intake water.~~

~~—(a) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:~~

~~—1. The applicable effluent limitations and standards contained in 40 CFR Chapter I, Subchapter N, Part 401 et seq., specifically provide that they may be applied on a net basis; or~~

~~2. The discharger demonstrates that the control system it proposes or uses to meet applicable technology based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.~~

~~(b) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) shall not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.~~

~~(c) Credit shall be granted only to the extent necessary to meet the applicable limitations or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.~~

~~(d) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The cabinet may waive this requirement if the cabinet finds that no environmental degradation will result.~~

~~(e) This subsection shall not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.~~

~~(8) Internal waste streams.~~

~~(a) If permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by Section 2(8) of this administrative regulation shall also be applied to the internal waste streams.~~

~~(b) Limits on internal waste streams shall be imposed only if the fact sheet under 401 KAR~~

~~5:075, Section 4, sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, for example, under ten (10) meters of water, the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.~~

~~—(9) Disposal of pollutants into wells, into POTWs, or by land application. Permit limitations and standards shall be calculated as provided in 401 KAR 5:055, Section 6.~~

~~—(10) Secondary treatment information. Permit conditions that involve secondary treatment shall be written as provided in 401 KAR 5:045.~~

~~Section 4. Primary Industry Categories. Any KPDES permit issued to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of the KPDES administrative regulations whether or not applicable effluent limitations guidelines have been promulgated.~~

~~—(1) Adhesives and sealants.~~

~~—(2) Aluminum forming.~~

~~—(3) Auto and other laundries.~~

~~—(4) Battery manufacturing.~~

~~—(5) Coal mining.~~

~~—(6) Coil coating.~~

~~—(7) Copper forming.~~

~~—(8) Electrical and electronic components.~~

~~—(9) Electroplating.~~

~~—(10) Explosives manufacturing.~~

- 1    ~~—(11) Foundries.~~
- 2    ~~—(12) Gum and wood chemicals.~~
- 3    ~~—(13) Inorganic chemicals manufacturing.~~
- 4    ~~—(14) Iron and steel manufacturing.~~
- 5    ~~—(15) Leather tanning and finishing.~~
- 6    ~~—(16) Mechanical products manufacturing.~~
- 7    ~~—(17) Nonferrous metals manufacturing.~~
- 8    ~~—(18) Ore mining.~~
- 9    ~~—(19) Organic chemicals manufacturing.~~
- 10   ~~—(20) Paint and ink formulation.~~
- 11   ~~—(21) Pesticides.~~
- 12   ~~—(22) Petroleum refining.~~
- 13   ~~—(23) Pharmaceutical preparations.~~
- 14   ~~—(24) Photographic equipment and supplies.~~
- 15   ~~—(25) Plastics processing.~~
- 16   ~~—(26) Plastic and synthetic materials manufacturing.~~
- 17   ~~—(27) Porcelain enameling.~~
- 18   ~~—(28) Printing and publishing.~~
- 19   ~~—(29) Pulp and paper mills.~~
- 20   ~~—(30) Rubber processing.~~
- 21   ~~—(31) Soap and detergent manufacturing.~~
- 22   ~~—(32) Steam electric power plants.~~
- 23   ~~—(33) Textile mills.~~



1     ~~—(34) Timber products processing.~~

2     ~~—Section 5. Federal Regulations Adopted Without Change. The following federal regulations~~  
3 ~~govern the subject matter of this administrative regulation and are hereby adopted without~~  
4 ~~change. The federal regulations are published by the Office of the Federal Register, National~~  
5 ~~Archives and Government Services, General Services Administration, and are available for~~  
6 ~~inspection and copying, subject to copyright laws, during normal business hours of 8 a.m. to 4:30~~  
7 ~~p.m., excluding state holidays, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky.~~  
8 ~~Copies are also available from the Superintendent of Documents, U.S. Government Printing~~  
9 ~~Office, Washington, D.C. 20402.~~

10    ~~—(1) Toxic Pollutant Effluent Standards, 40 CFR Part 129, revised as of July 1, 2001;~~

11    ~~—(2) Test Procedures for the Analysis of Pollutants, 40 CFR Part 136, revised as of July 1,~~  
12 ~~2001;~~

13    ~~—(3) Federal Effluent Limitations and Standards and New Source Performance Standards. 40~~  
14 ~~CFR Chapter I, Subchapter N, revised as of July 1, 2001; and~~

15    ~~—(4) Standards for the Use or Disposal of Sewage Sludge, 40 CFR Part 503, revised as of~~  
16 ~~August 4, 1999.]~~

401 KAR 5:065 “KPDES permit conditions.” (Amended After Comments) approved for promulgation:

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Date

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Henry “Hank” List, Deputy Secretary, FOR  
Lenard K. Peters, Secretary  
Energy and Environment Cabinet

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 5:065

Contact Person: Peter T. Goodmann, Assistant Director

**(1) Provide a brief summary of:**

- (a) What this administrative regulation does:** This regulation implements KRS 224.10-100 authorizing the cabinet to issue, continue in effect, revoke, modify, suspend, or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. Section 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251-1387, subject to the conditions imposed in 33 U.S.C. Sections 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act. This administrative regulation establishes the permit requirements that are applicable to all dischargers and contains additional requirements for specific categories of dischargers.
- (b) The necessity of this administrative regulation:** KRS 224.16-050 authorizes the cabinet to implement the Federal Water Pollution Control Act of 1977 (PL 95-217). This regulation provides specific requirements for permitting discharges into waters of the Commonwealth. All NPDES delegated states must have compatible state regulations.
- (c) How this administrative regulation conforms to the content of the authorizing statutes:** This regulation conforms to KRS 224.16-150 which authorizes the cabinet to implement the Federal Water Pollution Control Act. This regulation is consistent with the pollution prevention goals of KRS Chapter 224.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** This regulation provides specific requirements that are applicable to all dischargers, and contains requirements for specific categories of dischargers.

**(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:**

- (a) How the amendment will change this existing administrative regulation:** This amendment clarifies that the cabinet will consider interstate agency standards when developing permit limitations. This amendment revises language to comply with the drafting requirements in KRS 13A. It also strikes the federal regulation narrative reproduced in the administrative regulation, instead using citations to the applicable federal regulations. This amendment will allow Concentrated Animal Feeding Operations (CAFOs) to implement a nutrient management plan based on a linear or a narrative approach. A major change to a CAFO's nutrient management plan requires cabinet review of the nutrient management plan, and requires public notice with opportunity for comment. Amendments were made after comments to insert effective dates for each of the citations to federal regulations.
- (b) The necessity of the amendment to this administrative regulation:** This amendment will correct and update the regulation to make it consistent with the corresponding federal regulations. This amendment clarifies that the cabinet will consider interstate agency standards when developing permit limitations. This amendment makes it clear that such limitations are required.
- (c) How the amendment conforms to the content of the authorizing statutes:** This amendment conforms to KRS 224.16-150, which authorizes the cabinet to implement the Federal Water Pollution Control Act. This amendment conforms to KRS 224.18-100, which

authorizes interstate environmental compacts.

- (d) How the amendment will assist in the effective administration of the statutes:** This amendment clarifies that the cabinet will consider interstate agency standards when developing permit limitations. The amendment will aid in carrying out the goals of KRS Chapter 224.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:** This amendment affects individuals, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the KPDES permitting program. This administrative regulation affects over 10,000 existing permitted entities including individuals, businesses, and governmental organizations. After analysis of the current types of permits, the administrative regulation is expected to impact the following number of entities:
- a. Individuals: The number of permits issued to an individual under this regulation other than for a business or organization is insignificant.
  - b. Businesses: 1600 per year, primarily through industrial permits, non-public entity sanitary wastewater permits, and stormwater coverage issuances.
  - c. Organizations: 100 per year, primarily through individual sanitary permits issued to non-public organizations such as churches, summer camps, and private social or sporting clubs.
  - d. State or Local Government: 30 per year, primarily through permits for Public-Owned Treatment Works (POTWs).
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:**
- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:** The regulated entities will have to comply with permit conditions and limitations that may include standards adopted from interstate agencies. This change should cause very little additional impact.
- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):** None of the entities identified in question (3) is expected to incur additional costs. This amendment implements requirements that are already in federal regulations. The costs associated with amending this regulation to require the consideration of interstate standards should be insignificant because the standards of interstate agencies are not expected to be more stringent than existing state or federal standards. This amendment also makes changes to Concentrated Animal Farming Operations (CAFOs). CAFO's were required to implement a nutrient management plan prior to this amendment pursuant to federal regulations; therefore, adding the choice of a linear or narrative approach to the nutrient plan should cause no additional cost. The ability to choose the best nutrient management approach should lead to less cost because of fewer modifications to the permit.
- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3):** Regulated entities will not be confused by potential authority gaps arising between state and federal regulations as applied in interstate waters.

- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:**
- (a) Initially:** No additional burden is anticipated.
  - (b) On a continuing basis:** No additional burden is anticipated.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:** Existing permit fees, General Funds, and EPA Funds. There is no change in source of funding because of this amendment.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:** No additional fees or funding are expected to support this amendment.
- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:** This amendment does not directly or indirectly affect fees.
- (9) TIERING: Is tiering applied? (Explain why or why not).** The federal regulations provide tiered regulatory requirements through the identification of classes of industrial users, through specific requirements of POTWs, and through requirements for specific categories of dischargers. Program requirements and limitations depend upon the size and the specific category of the user. This administrative regulation is tiered in the same way as the federal regulations.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

**Regulation #:** 401 KAR 5:065

**Contact Person:** Peter T. Goodman, Assistant Director

- 1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?**

Yes   X        No       

If yes, complete questions 2-4.

- 2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?**

This administrative regulation affects all units of state or local government that have a KPDES discharge permit. The proposed amendment affects only those that discharge into waters bordering other states.

- 3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.**

The Clean Water Act and KRS 224

- 4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**

This administrative regulation is expected to affect approximately thirty state or local government agencies per year as wastewater permits are issued or re-issued. The amendment to consider the standards of interstate agencies is expected to affect fewer than five entities per year. The impact of the proposed amendment should be insignificant because the standards of interstate agencies are unlikely to be more stringent than the existing state and federal requirements of this administrative regulation.

**(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?** This amendment is not expected to generate additional state or local government revenue.

**(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?** None

**(c) How much will it cost to administer this program for the first year?** No additional cost is expected

**(d) How much will it cost to administer this program for subsequent years?** No additional cost is expected

**Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.**

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## **FEDERAL MANDATE ANALYSIS COMPARISON**

Administrative Regulation#: 401 KAR 5:065

Contact Person: Peter T. Goodman, Assistant Director

**1. Federal statute or regulation constituting the federal mandate.**

40 CFR 122 and U.S.C. 1251-1387.

**2. State compliance standards.**

KRS 224.16-050, 224.18-100

**3. Minimum or uniform standards contained in the federal mandate.**

The federal standard requires that primacy states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act, as Amended (33 U.S.C. 1251-1387).

**4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?**

No.

**5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.**